

AMENDED IN SENATE AUGUST 17, 1999

AMENDED IN SENATE JULY 12, 1999

AMENDED IN ASSEMBLY MAY 17, 1999

AMENDED IN ASSEMBLY MAY 3, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 416

Introduced by Assembly Member Machado

February 12, 1999

An act to amend Section 56.10 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

AB 416, as amended, Machado. Personal information: disclosure.

Existing law prohibits the disclosure of medical information by providers of health care, as defined, without the patient's prior authorization, except in specified circumstances. However, existing law permits the disclosure of specified personally identifiable information by those providers unless the patient specifically requests in writing to the contrary. A violation of these provisions that results in economic loss or personal injury to a patient is punishable as a misdemeanor. In addition, a patient whose medical information is used or disclosed in violation of these provisions is subject to civil penalties.

This bill would prohibit health care providers from releasing specified medical information created regarding an individual as a result of that person's participation in outpatient treatment with a psychotherapist, as defined, unless the person or entity requesting the information submits a written request, signed by the ~~patient and the~~ requester as specified. Since a violation of this provision that results in economic loss or personal injury to a patient would be punishable as a crime, the bill would impose a state-mandated local program. The bill would include a statement of findings and declarations.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the
- 2 following:
- 3 (a) Privacy is a fundamental right of Californians.
- 4 (b) Mental health treatment, in order to be effective,
- 5 depends upon open communication based on the
- 6 patient's trust in the practitioner.
- 7 (c) A relationship of trust can only be established if the
- 8 patient is confident that access to his or her personal
- 9 information will be limited and that the information will
- 10 be protected to the fullest extent possible.
- 11 (d) In recognition of the fundamental importance of
- 12 maintaining this relationship with patients, mental health
- 13 practitioners are bound by professional codes of ethics
- 14 and laws designed to protect sensitive information.
- 15 (e) As managed care has expanded in recent years,
- 16 mental health professionals have been forced to choose
- 17 between their obligation to protect the confidentiality of
- 18 patient information and the demands of insurers and



1 health care service plans that operate the health care
2 system to obtain that information for administrative
3 purposes other than authorization of treatment and
4 payment of services.

5 (f) The inclusion of recognizable patient identification
6 information in medical records obtained by health care
7 service plans or insurers exposes sensitive identifying
8 information about the patient, thereby jeopardizing the
9 patient's privacy.

10 (g) Laws providing for the confidentiality of medical
11 information should protect patients from the unlawful
12 disclosure of their most personal information.

13 (h) Informed consent is appropriately given by the
14 patient's signature on an authorization to release
15 information that clearly and specifically states the
16 information requested, the purpose for the request, the
17 identity of those who will have access to the information,
18 the date the authorization was signed, and an expiration
19 date.

20 (i) Patients should not forfeit their right to
21 confidentiality of their personal information to insurers or
22 health care service plans for purposes other than those
23 purposes authorized by law.

24 (j) Patient records often contain the names of, and
25 personal information regarding, persons other than the
26 patient and the privacy of those persons should also be
27 protected.

28 SEC. 2. Section 56.10 of the Civil Code is amended to
29 read:

30 56.10. (a) No provider of health care shall disclose
31 medical information regarding a patient of the provider
32 without first obtaining an authorization, except as
33 provided in subdivision (b) or (c).

34 (b) A provider of health care shall disclose medical
35 information if the disclosure is compelled by any of the
36 following:

37 (1) By a court pursuant to an order of that court.

38 (2) By a board, commission, or administrative agency
39 for purposes of adjudication pursuant to its lawful
40 authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) When otherwise specifically required by law.

(c) Except as provided in subdivision (d), a provider of health care may disclose medical information as follows:

(1) The information may be disclosed to providers of health care or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1200) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient

1 is, by reason of a comatose or other disabling medical
2 condition, unable to consent to the disclosure of medical
3 information and (B) no other arrangements have been
4 made to pay for the health care services being rendered
5 to the patient, the information may be disclosed to a
6 governmental authority to the extent necessary to
7 determine the patient's eligibility for, and to obtain,
8 payment under a governmental program for health care
9 services provided to the patient. The information may
10 also be disclosed to another provider as necessary to assist
11 the other provider in obtaining payment for health care
12 services rendered by that provider to the patient.

13 (3) The information may be disclosed to any person or
14 entity that provides billing, claims management, medical
15 data processing, or other administrative services for
16 providers or for any of the persons or entities specified in
17 paragraph (2). However, no information so disclosed
18 shall be further disclosed by the recipient in any way that
19 would be violative of this part.

20 (4) The information may be disclosed to organized
21 committees and agents of professional societies or of
22 medical staffs of licensed hospitals, to licensed health care
23 service plans, to professional standards review
24 organizations, to utilization and quality control peer
25 review organizations as established by Congress in Public
26 Law 97-248 in 1982, or to persons or organizations
27 insuring, responsible for, or defending professional
28 liability that a provider may incur, if the committees,
29 agents, plans, organizations, or persons are engaged in
30 reviewing the competence or qualifications of health care
31 professionals or in reviewing health care services with
32 respect to medical necessity, level of care, quality of care,
33 or justification of charges.

34 (5) The information in the possession of any provider
35 of health care may be reviewed by any private or public
36 body responsible for licensing or accrediting the provider
37 of health care. However, no patient identifying medical
38 information may be removed from the premises except
39 as expressly permitted or required elsewhere by law.

1 (6) The information may be disclosed to the county
2 coroner in the course of an investigation by the coroner's
3 office.

4 (7) The information may be disclosed to public
5 agencies, clinical investigators, health care research
6 organizations, and accredited public or private nonprofit
7 educational or health care institutions for bona fide
8 research purposes. However, no information so disclosed
9 shall be further disclosed by the recipient in any way that
10 would permit identification of the patient.

11 (8) A provider of health care that has created medical
12 information as a result of employment-related health care
13 services to an employee conducted at the specific prior
14 written request and expense of the employer may
15 disclose to the employee's employer that part of the
16 information that:

17 (A) Is relevant in a lawsuit, arbitration, grievance, or
18 other claim or challenge to which the employer and the
19 employee are parties and in which the patient has placed
20 in issue his or her medical history, mental or physical
21 condition, or treatment, provided it may only be used or
22 disclosed in connection with that proceeding.

23 (B) Describes functional limitations of the patient that
24 may entitle the patient to leave from work for medical
25 reasons or limit the patient's fitness to perform his or her
26 present employment, provided that no statement of
27 medical cause is included in the information disclosed.

28 (9) Unless the provider is notified in writing of an
29 agreement by the sponsor, insurer, or administrator to
30 the contrary, the information may be disclosed to a
31 sponsor, insurer, or administrator of a group or individual
32 insured or uninsured plan or policy that the patient seeks
33 coverage by or benefits from, if the information was
34 created by the provider of health care as the result of
35 services conducted at the specific prior written request
36 and expense of the sponsor, insurer, or administrator for
37 the purpose of evaluating the application for coverage or
38 benefits.

39 (10) The information may be disclosed to a group
40 practice prepayment health care service plan by

1 providers that contract with the plan and may be
2 transferred among providers that contract with the plan,
3 for the purpose of administering the plan. Medical
4 information may not otherwise be disclosed by a health
5 care service plan except in accordance with the
6 provisions of this part.

7 (11) Nothing in this part shall prevent the disclosure
8 by a provider of health care to an insurance institution,
9 agent, or support organization, subject to Article 6.6
10 (commencing with Section 791) of Part 2 of Division 1 of
11 the Insurance Code, of medical information if the
12 insurance institution, agent, or support organization has
13 complied with all requirements for obtaining the
14 information pursuant to Article 6.6 (commencing with
15 Section 791) of Part 2 of Division 1 of the Insurance Code.

16 (12) The information relevant to the patient's
17 condition, care, and treatment provided may be disclosed
18 to a probate court investigator engaged in determining
19 the need for an initial conservatorship or continuation of
20 an existent conservatorship, if the patient is unable to give
21 informed consent, or to a probate court investigator,
22 probation officer, or domestic relations investigator
23 engaged in determining the need for an initial
24 guardianship or continuation of an existent guardianship.

25 (13) The information may be disclosed to a tissue bank
26 processing the tissue of a decedent for transplantation
27 into the body of another person, but only with respect to
28 the donating decedent, for the purpose of aiding the
29 transplant. For the purpose of this paragraph, the terms
30 "tissue bank" and "tissue" have the same meaning as
31 defined in Section 1635 of the Health and Safety Code.

32 (14) The information may be disclosed when the
33 disclosure is otherwise specifically authorized by law.

34 (15) Basic information including the patient's name,
35 city of residence, age, sex, and general condition may be
36 released to a state or federally recognized disaster relief
37 organization for the purpose of responding to disaster
38 welfare inquiries.

39 (d) (1) No provider of health care may release
40 medical information to persons or entities currently

1 authorized by law to receive that information pursuant to
2 paragraphs (2), (3), and (7) to (10), inclusive, of, or to
3 licensed health care service plans described in paragraph
4 (4) of, subdivision (c), if the requested information
5 specifically relates to the patient's participation in
6 outpatient treatment with a psychotherapist, unless the
7 person or entity requesting that information submits the
8 provider of health care a written request, signed by the
9 ~~patient and the~~ person requesting the information or an
10 authorized agent of the entity requesting the
11 information, that includes all of the following:

12 (A) The specific information relating to a patient's
13 participation in outpatient treatment with a
14 psychotherapist being requested and its specific intended
15 use or uses.

16 (B) The length of time during which the information
17 will be kept before being destroyed or disposed of. A
18 person or entity may extend that timeframe, provided
19 that the person or entity notifies the provider of the
20 extension. Any notification of an extension shall include
21 the specific reason for the extension, the intended use or
22 uses of the information during the extended time, and the
23 expected date of the destruction of the information.

24 (C) A statement that the information will not be used
25 for any purpose other than its intended use.

26 (D) A statement that the person or entity requesting
27 the information will destroy the information and all
28 copies in the person's or entity's possession or control, will
29 cause it to be destroyed, or will return the information
30 and all copies of it before or immediately after the length
31 of time specified in subparagraph (B) has expired.

32 (2) The person or entity requesting the information
33 shall submit a copy of the written request required by this
34 subdivision to the patient within 30 days of receipt of the
35 information requested, unless the patient has signed a
36 written waiver of this notification.

37 (3) For purposes of this subdivision, "psychotherapist"
38 means a person who is both a "psychotherapist" as
39 defined in Section 1010 of the Evidence Code and a



1 “provider of health care” as defined in subdivision (d) of
2 Section 56.05 of the Civil Code.

3 (4) This subdivision shall not apply to uses of the
4 information related to law enforcement and
5 investigations of crimes or investigations of
6 unprofessional conduct under the Business and
7 Professions Code.

8 (5) Nothing in this subdivision shall be construed to
9 grant any additional authority to a provider of health care
10 to disclose information to a person or entity without the
11 patient’s consent.

12 SEC. 3. No reimbursement is required by this act
13 pursuant to Section 6 of Article XIII B of the California
14 Constitution because the only costs that may be incurred
15 by a local agency or school district will be incurred
16 because this act creates a new crime or infraction,
17 eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition
20 of a crime within the meaning of Section 6 of Article
21 XIII B of the California Constitution.

